STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS
Saad, P.J., Sayer and Jansen, JJ

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,

v

RICHARD LEE HARTWICK,
Defendant-Appellant

Mich Sup. Ct. No.: 148444
Court of Appeals No.: 312308
Lower Court No.: 2011-240981-FH

AMICUS CURIAE BRIEF OF CANNABIS PATIENTS UNITED IN SUPPORT OF DEFENDANT-APPELLANT RICHARD LEE HARTWICK

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STATEMENT OF INTEREST OF AMICI CURIAE

Cannabis Patients United ("CPU") is a 501(c)4 non-profit corporation organized under Michigan law. Its members are committed to maintaining the core principles of the Michigan Medical Marijuana Act ("MMMA") and to ensuring that the provisions of the MMMA are applied fairly and as intended. CPU's members include patients, caregivers, attorneys, physicians and business professionals.

Formed out of the necessity to ensure proper implementation and understanding of the MMMA, CPU has worked with state and local representatives, prosecutors, law enforcement, and health officials to achieve our goals. CPU believes in common sense interpretations of the MMMA, and insists that the plain language of the Act must be interpreted in a manner to protect the individuals for whom it was written - the patients.

CPU recognizes that when the MMMA was overwhelmingly approved by Michigan voters in 2008, the voters expressed their intent to protect patients who need marijuana as a medicine and their caregivers. CPU consists of and represents patients and other affiliated businesses that stand committed to the principles of professionalism, honest and ethical business practices, fairness, compassion, and respect for the law. It is CPU's position that the key to proper implementation of the Act is to provide education to community leaders, state legislators and the law enforcement community.

CPU states in light of the potential impact of the decision before the court, they have a significant legal interest in this matter and that the perspective CPU is very important to the proper resolution of this case.

STATEMENT OF JURISDICTION

Amici Curiae CPU accepts the statement of jurisdiction in Appellee's Brief at *vi*.

STATEMENT OF QUESTIONS INVOLVED

I. WHETHER A DEFENDANT'S ENTITLEMENT TO IMMUNITY UNDER § 4 OF THE MICHIGAN MEDICAL MARIHUANA ACT (MMMA), MCL 333.26421 *et seq.*, IS A QUESTION OF LAW FOR THE TRIAL COURT TO DECIDE?

Amici Curiae CPU answers "Yes, absent issues reserved to a jury."

II. WHETHER FACTUAL DISPUTES REGARDING § 4 IMMUNITY ARE TO BE RESOLVED BY THE TRIAL COURT?

Amici Curiae CPU answers "Yes, absent issues reserved to a jury."

III. IF SO, WHETHER THE TRIAL COURT'S FINDING OF FACT BECOMES AN ESTABLISHED FACT THAT CANNOT BE APPEALED?

Amici Curiae CPU answers "No."

IV. WHETHER A DEFENDANT'S POSSESSION OF A VALID REGISTRY IDENTIFICATION CARD ESTABLISHES ANY PRESUMPTION FOR PURPOSES OF § 4 OR § 8?

Amici Curiae CPU answers "Yes."

V. IF NOT, WHAT IS A DEFENDANT'S EVIDENTIARY BURDEN TO ESTABLISH IMMUNITY UNDER § 4 OR AN AFFIRMATIVE DEFENSE UNDER § 8?

Amici Curiae CPU answers that § 8 requires *prima facie* evidence. Amici Curiae CPU notes the answer to Question IV as to § 4 must be "Yes."

VI. WHAT ROLE, IF ANY, DO THE VERIFICATION AND CONFIDENTIALITY PROVISIONS IN § 6 OF THE ACT PLAY IN ESTABLISHING ENTITLEMENT TO IMMUNITY UNDER § 4 OR AN AFFIRMATIVE DEFENSE UNDER § 8?

Amici Curiae CPU says privileged health information is protected and that the verification provisions in § 6 gives guidance as to attacks upon a patient's relationship with his doctor.

VII. WHETHER THE COURT OF APPEALS ERRED IN CHARACTERIZING A QUALIFYING PATIENT'S PHYSICIAN AS ISSUING A PRESCRIPTION FOR, OR PRESCRIBING, MARIJUANA.

Amici Curiae CPU answers "Yes."

ARGUMENT

To the extent individuals endeavor to participate in Michigan's Medical Marihuana Program, the immunity provisions (and how they are applied) are perhaps the most important provisions in the Act. They determine whether participants will be deprived of liberty and property at the whim of law enforcement. Only § 4 can protect a registry participant from lengthy and costly legal proceedings. Without a clear statement from this Court, patients and caregivers in Michigan will be subject to the arbitrary application of the Act's protections, and the will of the voters will be vitiated.

I. A DEFENDANT'S ENTITLEMENT TO IMMUNITY UNDER § 4 OF THE MICHIGAN MEDICAL MARIHUANA ACT (MMMA), MCL 333.26421 *et seq.*, IS A QUESTION OF LAW FOR THE TRIAL COURT TO DECIDE ABSENT ISSUES RESERVED TO A JURY

In general, immunity under § 4 should be determined as early in the case as possible,[1] and accordingly, should generally be determined by the trial court as a matter of law.[2] For example, when a registry participant has less marihuana than allowed and presents a valid registry card, the trial court should immediately dismiss the case. It

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[1] *Hunter v. Bryant*, 502 U.S. 224, 228 (1991). While various types of immunity have been recognized, perhaps the best insights as to how Michigan courts should consider immunity under Michigan's Medical Marihuana Act are those that can be gained from considering the doctrine of qualified immunity for government officials. "Government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) Qualified immunity insulates the official not only from an award of money damages, but also from the burdens of suit. *See Harbert Int'l Inc., v. James*, 157 F.3d 1271, 1280 (11th Cir. 1998) (court must exercise its discretion so that officials are not subjected to unnecessary and burdensome discovery or trial proceedings).

[2] At the same time, CPU does not take the position Section 4 must be brought in a pretrial motion (as opposed to simply ruling it must be determined if raised). There is no reason that a defendant couldn't, for whatever reason, assert the defense of immunity under Section 4 at the time of trial. In other words, if it is brought, it must be addressed. And if it is not, nothing in the Act precludes the defense from being asserted at trial.

might also be noted that immunity analysis in general gives the person whom enjoys the immunity something akin to the benefit of any doubt.[3]

However, circumstances often arise where, although the basic facts are not in dispute, there are nevertheless disputes about whether the registry participant is entitled to dismissal. For example, disputes commonly arise over whether a facility is "locked and secured" as required by the Act.[4] Likewise, there is often a question regarding whether marihuana in question is "usable" as defined by the Act. These two

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[3] *See Anderson v. Creighton*, 483 U.S. 635, 640 (1987). It has been said the court must consider the facts in the light most favorable to the non-moving party, and draw[ing] all reasonable inferences in his favor, and only when plaintiff"s version of events is "utterly discredited by the record," the appellate court can disregard it. *Scott v Harris*, 550 U.S. 372 at 380-81.

[4] For example, Act was amended in 2013, and these amendments include new provisions that allow the outdoor growing of marihuana. As amended, the Act states:

> "Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. Marihuana plants grown outdoors are considered to be in an enclosed, locked facility if they are not visible to the unaided eye from an adjacent property when viewed by an individual at ground level or from a permanent structure and are grown within a stationary structure that is enclosed on all sides, except for the base, by chain-link fencing, wooden slats, or a similar material that prevents access by the general public and that is anchored, attached, or affixed to the ground; located on land that is owned, leased, or rented by either the registered qualifying patient or a person designated through the departmental registration process as the primary caregiver for the registered qualifying patient or patients for whom the marihuana plants are grown; and equipped with functioning locks or other security devices that restrict access to only the registered qualifying patient or the registered primary caregiver who owns, leases, or rents the property on which the structure is located. * * *

For an outdoor grow, a ***presumption*** applies that they are locked and secured, as the Act states, the "are considered to be in an enclosed, locked facility. However, the new presumption created by the added safe-harbor definition does not take away from or otherwise trump the standard definition for a locked and secured grow, with the ultimate test being whether the "locks or other functioning security devices" "permit access only by a registered primary caregiver or registered qualifying patient." The reality is that no facility (short of perhaps Fort Knox) is absolutely locked and secured. As such, it is necessarily a reasonableness determination. These inherently factual matters should be resolved by a jury, not a judge.

examples involve inherently factual determinations that should be the sole providence of the jury.[5]

In addition, CPU notes that while there is a fair amount of discussion in the party's briefs relating to rebuttal of the presumption stated in § 4(d),[6] there is almost no briefing relating to the applicable evidentiary burden. There is likewise little attention to whether an effort to rebut the presumption stated in § 4(d) it is a question of law for the trial court, or a factual determination for a jury. It is CPU's position that if the prosecution seeks to rebut the presumption stated in § 4(d), it must be beyond a reasonable doubt by the trier of fact, not the trial court.[7]

It should also be made clear it is CPU's position that in the event immunity under § 4 is denied for any reason, an immediate right to appeal is appropriate.[8]

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[5] It is CPU suggestion that in cases where there is not balancing of the evidence and immunity can be determined by a plant count or weight, immunity is properly decided at the earliest possible time, and can be determined by the judge. Where there are essentially reasonableness determinations (or perhaps weight of evidence or credibility determinations), the factual disputes must be determined by a jury.

[6] The Act includes a presumption of medical use in MCL 333.26424(d):

> (d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver: (1) is in possession of a registry identification card; and (2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

[7] This language in the Act was explained in *People v. McQueen,* "If a qualifying patient or primary caregiver is in possession of a registry identification card and an amount of marihuana that does not exceed that allowed by the MMMA, § 4(d) provides a presumption that the qualifying patient or the primary caregiver "is engaged in the medical use of marihuana in accordance with th[e] act[.]" MCL 333.26424(d)(1), (2).

[8] As is the case with qualified immunity. *See Mitchell v. Forsyth* 472 U.S. 511, 521 (1985).

II. FACTUAL DISPUTES REGARDING § 4 IMMUNITY ARE TO BE RESOLVED BY THE TRIAL COURT ABSENT ISSUES RESERVED TO A JURY

It is plain enough that, in general, questions of immunity should be determined by the trial court at the earliest opportunity, such that the Act will protect those who comply with the numerical limitations imposed by the Act. The trial court should immediately dismiss such cases whenever the issue is raised. However, other issues are of a nature that the resolution of such issues requires a determination by a jury. For example, whether a facility is locked and secured as required by the Act, if challenged by the prosecution, must be a jury question. If challenged, a claim that a patient does not suffer from a legitimate condition must be a jury question. If challenged, whether the material in question is usable marihuana is a jury question.

Essentially, it is the prosecution's burden to establish at trial beyond a reasonable doubt any assertion that the protections in § 4 fail to protect the registry participant asserting the protections of § 4.

III. THE TRIAL COURT'S FINDING OF FACT DO NOT BECOME ESTABLISHED FACTS THAT CANNOT BE APPEALED

To the extent the trial court makes a finding of fact supporting a finding of immunity as stated § 4, dismissal is proper, and the prosecution is certainly free to seek any appellate rights it may choose to pursue. To the extent immunity under § 4 is denied, an immediate right to appeal arises; should the registry participant seek an interlocutory appeal; determinations of law by the trial court are reviewed de novo. However, as to factual grounds, immunity should be found unless the asserted grounds for the immunity are blatantly contradicted by the record, so that no reasonable jury

could believe it, such that the court couldn't adopt that version of the facts for purposes of ruling on a motion.[9]

However, at the same time, because the only proper construction of the Act dictates that the denial of immunity under § 4 because of an effort by the prosecution to rebut the presumption in § 4(d) or some other technical defect (such as an assertion that the facility was not sufficiently locked and secured), the denial of immunity on such grounds will only follow a jury trial (unless waived), and therefore, the question presented will arise only in limited circumstances.

IV. A DEFENDANT'S POSSESSION OF A VALID REGISTRY IDENTIFICATION CARD ESTABLISHES PRESUMPTIONS FOR PURPOSES OF § 4 AND § 8

It is CPU's position that in all cases, the registry cards must be given the same level of deference that all other such government issued certificates and licenses entail.[10] Sadly, CPU must report that often law enforcement treat registry cards as if they can be ignored or presumed fraudulent. It must be recognized that the citizens of Michigan overwhelmingly supported the Act, and the country as a whole is increasingly recognizing both the medical benefits of cannabis and the harms of aggressive prosecution of those involved with cannabis. To the extent there are concerns relating to any aspect of the registry process, the doctors that make recommendations, or the

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[9] *Scott v. Harris*, 550 U.S. 372 (2007)

[10] To receive a registry card, it is necessary to submit an application to the State of Michigan, and that the applicant is required to swear or attest the information is true. The card shows that a doctor licensed to practice medicine in Michigan completed a physician's certification that was submitted to the State of Michigan, both affirming that accurate information was provided and certifying the patient has a qualifying condition. Government issued documents of such as registry cards are **designed and contemplated** to be relied upon by citizens who are endeavoring to follow the law.

patients and caregivers who engage in the medical use of marihuana, those concerns must not have the effect of nullifying the Act.

Because Michigan adopted a registry system *in addition to* an affirmative defense for the medical use of marihuana (*i.e.*, the § 8 defense), it would seem that even to the extent there is some defect in the registry participant's cardholding status (say an expired card), the card will always be potentially relevant to any defense or immunity.

In the context of an assertion of immunity under § 4, the card itself is **all** of the necessary evidence required to be presented by the registry participant for dismissal. To the extent the prosecution raises any claim that there is a technical defect in compliance with the Act, the defendant must have the right to assert that matter be resolved by a jury. It is there the prosecution's burden to establish, beyond a reasonable doubt, that the cardholder was not protected.

In the context of the assertion of an affirmative defense under § 8, the relevance of any registry cards is contingent upon the reason the individual is not immune from prosecution. For example, it could be imagined that, at the time of police contact, a caregiver might have inadvertently allowed a card to expire. In such a situation, it would seem quite reasonable to allow the issuance of patient and caregiver cards to satisfy the majority of the requirements of an affirmative defense under § 8. To the extent such a technical defect is revealed, it would appropriate for the trial court to limit the scope of inquiry to those issues directly germane to the expired card.

In other circumstances, a more reaching inquiry might be deemed appropriate.[11] For example, to the extent a caregiver under the Act had himself secured a patient card, but was assisting a number of unregistered patients, the factual determinations relating to those who chose not to participate in the registry would require a more detailed showing,[12] and that the caregiver himself was a patient would establish very little.

But critically, to the extent that a **technical violation** of the Act (as opposed to a decision not to be a registry participant) is the reason an affirmative defense under § 8 is being asserted, **all** of the presumptions stated in § 4 nevertheless apply, and it is the prosecutions burden, at trial before a jury, to demonstrate beyond a reasonable doubt that the presumptions are rebutted.

V. IF THE CARD PLAYS NO ROLE IN § 4, THAT SECTION IS NULLIFIED. AND DEFENDANT'S EVIDENTIARY BURDEN TO ESTABLISH IMMUNITY UNDER § 8 IS LIMITED TO PRESENTING PRIMA FACIE EVIDENCE WHICH MIGHT INCLUDE REGISTRY CARDS.

As to the evidentiary burden to establish immunity under § 4, CPU repeats its position as stated above, and states that if this court should determine that the possession of a valid registry card plays no role in the determination of immunity, such an opinion would simply **nullify** the most important protections stated in the Act.

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[11] § 8 uses a distinct term "medical purpose" whereas § 4 immunity is conditioned upon "medical use," a defined term. As explained in *Kolanek,* the two sections serve different purposes, and have different scope and different levels of protection.

[12] At the same time, CPU would remind the court that Section 8 of the Act also includes a presumption, and provides that "a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid..."

As to the evidentiary burden to establish immunity under § 8, it is CPU's position that at the pre-trial hearing the defendant need only present *prima facie* evidence[13] as to each element. Here, CPU adopts the well reasoned positions of the Appellant and the *amicus* brief of Cannabis Attorneys of Michigan. At the same time, CPU would recognize that the evidentiary requirements may differ where the affirmative defense is asserted by those who were not registry participants, as opposed to those seeking the safe-harbor of § 8 relating to a technical defect. At the same time, compliance with the presumptive limits of Section 4 should be considered *prima facia* evidence for a motion to dismiss under § 8.

VI. THE VERIFICATION AND CONFIDENTIALITY PROVISIONS IN § 6 OF THE ACT PLAY AN IMPORTANT ROLE IN ESTABLISHING IMMUNITY UNDER § 4 AND AN AFFIRMATIVE DEFENSE UNDER § 8

CPU strongly disagrees that the assertion of immunity under § 4 or the assertion of an affirmative defense under § 8 automatically waives confidentiality or any medical privilege. If a caregiver asserts the affirmative defense under § 8 where the individuals the caregiver assists with medical marihuana are registry cardholders, and to the extent the numerical limitations are complied with as to those cardholding patients, **absolute**

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[13] In *People v Stewart*, 397 Mich 1, 6 n 1; 242 NW2d 760 (1976), *on rehearing* 400 Mich 540; 256 NW2d 31 (1977). the Michigan Supreme Court quoted its earlier opinion in *Stewart v Rudner*, 349 Mich 459; 84 NW2d 816 (1957). for the following definition of a prima facie case: "a prima facie case means, and means no more than, evidence sufficient to justify, but not to compel, an inference of liability, if the jury so find." *Id.* quoting *McDaniel v Atlantic Coast Line R*, 190 NC 474, 475; 130 SE 208 (1925). Likewise, it might be said some evidence with respect to each element or evidence from which the elements may be inferred must be shown. Consider *People v Harlan*, 258 Mich App 137; 669 NW2d 872 (2003); *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000); *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995). This court might also consider that evidence that both supports and negates an inference raises a factual question that the court must leave to the jury." *People v Northey*, 231 Mich App 568, 575; 591 NW2d 227 (1998).

confidentiality of those card-holding patients must be respected by the courts.[14] It does violence to the Act for courts to explore the private medical conditions of patients who have complied with the Act, and merely because of an alleged technical violation by their caregiver, are subject to a claimed waiver of their privileged and confidential medical information. The waiver of any medical privilege must be protected by giving strength to the presumption of medical use up to the numerical limitations stated in § 4.

CPU likewise asserts that the verification provisions in § 6 of the act must be given maximum weight. To the extent that a prosecutor might decide to attack a

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[14] Medical records are privileged in the State of Michigan by way of the physician-patient privilege and the counselor-client privilege, and further protections are provided by Michigan's Medical Records Access Act. By statute, the physician-patient privilege provides:

> "Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon."

MCL 600.2157. Communications in the context of a counselor - client relationship are likewise protected. The applicable statute states:"For the purposes of this part, the confidential relations and communications between a licensed professional counselor or a limited licensed counselor and a client of the licensed professional counselor or a limited licensed counselor are privileged communications, and this part does not require a privileged communication to be disclosed, except as otherwise provided by law. Confidential information may be disclosed only upon consent of the client, pursuant to Section 16222 if the licensee reasonably believes it is necessary to disclose the information to comply with Section 16222, or under Section 1628." MCL 333.18117.

Michigan has also adopted as part of the Michigan's Medical Records Access Act ("MMRAA") a provision that expressly provides additional protections, stating that a "health care provider or health facility" may refuse to disclose a record if it "determines that disclosure of the requested medical record is likely to have an adverse effect on the patient." MCL 333.26265(2)(e). The concerns of "adverse effect" as expressed in the MMRAA are touched upon here. Not only does the nature of the conditions (such as HIV status) that qualify a person to use medical marihuana raise acute privacy concerns, but because marijuana is presently illegal under federal law for most purposes, personal information relating to medical marihuana use is especially sensitive.

And not only does the MMMA provide for confidentiality, it further has an express provision invalidating searches premised on an individuals status as a registry participant. Specifically, the Act states that a persons possession or application for a registry card shall not subject him to a search or any inspection by any governmental agency. The Act states: "Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency." MCL 333.26426(g).

physician's recommendation or question a patient's relationship with his doctor, such issues should be raised with the appropriate board or bureau that regulates the physician in question. Concerns about a given physician's practices should not be the focus in a criminal prosecution of a patient of that physician. Such absurdities undermine the purposes of the Act.

VII. THE COURT OF APPEALS ERRED IN CHARACTERIZING A QUALIFYING PATIENT'S PHYSICIAN AS ISSUING A PRESCRIPTION FOR, OR PRESCRIBING, MARIJUANA.

While calling a physician's recommendation a "prescription" seems like an obvious error, it evidences a far more destructive element lurking in Michigan's trial courts in terms of the protections intended by the Act. It is the *reason* why a recommendation is not a prescription that is critical, and that reason relates to the unrelenting efforts by prosecutors to make the protections of § 8 illusory.

It has been recognized that the United States Constitution protects a physician's ability to discuss the medical use of marihuana with the physician's patients.[15] And while Michigan's Act provides specific guidance as to the physician's role in the registry program,[16] any argument that the physician must testify as to the specifics of the

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[15] See *Conant v. Walters*, 309 F.3d 639 (9th Cir. 2002) ("*Conant III*"). Like the policy enjoined in the *Conant III*, forced disclosure of confidential physician-patient communications regarding medical marijuana would shatter the trust and confidence necessary for good medical care. Patients will understandably be less likely to ask a physician about the possible benefits or harms of medical marijuana if he or she believed that the discussion might be disclosed, and individuals that suffer from property deprivations and unlawful seizures will be unwilling to pursue their legal rights.

[16] In order to comply the Section 4(f) of the Act (MCL 333.26424), for a recommending physician to enjoy the Act's protections from arrest, prosecution, or penalty, all certifications must be written "..in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history."

administration of marihuana[17] (or even more misguided, the number of plants to be grown), is radically misplaced.[18] Forced disclosure of physician-patient communications regarding medical marijuana would have the same chilling effect as the government's illegal policy of punishing physicians directly, and attempts to invade patient privacy and chill protected physician-patient speech regarding medical marijuana have been enjoined by other courts.[19]

It is CPU's position that the proper starting point for this analysis is that the Act recognizes that the physician-patient relationship is defined both in terms of a counseling and a treatment relationship.[20] This is consistent with the recent addition of post traumatic stress disorder as a qualifying condition. CPU stresses that the individual who may have agreed to assist with the medical use of marihuana (i.e., the patient's caregiver) is not privy to this counseling and a treatment relationship between the doctor and his patient. Caregivers are not doctors. Patients who register in Michigan's program are **the patients of their doctors**, *not* patients of the caregiver who agreed to assist them. Patients must never feel obligated to share anything with their caregivers

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[17] CPU further notes that the prosecution's demands that the physician offer specific testimony regarding frequency and dosage of cannabis are inconsistent with routine medical practice. A vast number of medications are prescribed on a "p.r.n." basis ("p.r.n." is an abbreviation meaning "when necessary" (from the Latin "pro re nata", for an occasion that has arisen, as circumstances require, as needed)). Given the nature of cannabis, the recommendation for its use must necessarily be on a "p.r.n." basis.

[18] CPU would also remind the court to take into consideration the duly adopted administrative rules relating to the MMMA.

[19] *Conant v. Walters*, 309 F.3d 639 (9th Cir. 2002) ("Conant III"). Responding to state medical-marijuana statutes, the federal government investigated doctors and threatened to punish any doctor who recommended marijuana to a patient. This attack on medical speech and privacy was stopped only when the government was permanently enjoined from investigating or punishing doctors for recommending medical marijuana, based on a holding that physicians and patients enjoy a First Amendment right communicate about the medical risks and benefits of marijuana.

[20] See MCL 333.26423(a)

other than their registry status and their needs for medical marihuana, not to exceed their statutory limits. While some patient's needs might exceed the scope of the protections of § 4 (and in such cases additional coordination between the patient, caregiver, and physician might be appropriate), the general rule must always protect the patient. And to protect the patient, the Act must always be construed in a manner that will not place his caregiver at odds with protecting the medical privacy of those he agreed to assist.

CONCLUSION AND RELIEF REQUESTED

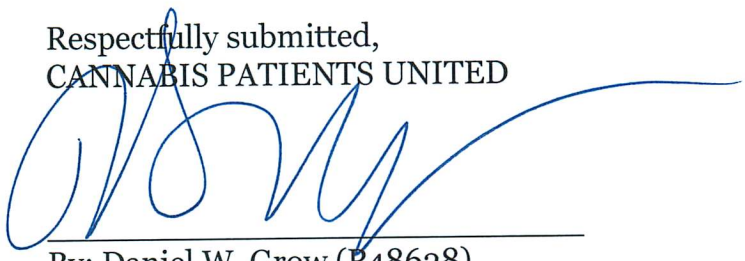
CPU asks this honorable court to consider it's arguments when answering the questions in the companion cases of *People v. Tuttle* and *People v. Mazur*. Again, to the extent a caregiver might exceed the scope of the protections of § 4 in an effort to assist with the medical use of marihuana, the general rule must always protect the patient, and in this regard, the Act must always be construed in a manner that will not place his caregiver at odds with protecting the medical privacy of those who engage in the medical use of marihuana. To the extent the protection of this principle may thwart law enforcement's use of deception as part of their efforts to prosecute caregivers, it is CPU's position that this court must extend this protection. Perhaps as a corollary to its positions on the above issues, CPU maintains that a prosecution relating to a single technical violation should focus strictly upon the single violation, and that it must at all times remain the prosecution's burden to establish each and every alleged violation beyond a reasonable doubt before the trier of fact.

In addition, (regard to the issues presented in *Mazur*), it is with great sadness that CPU reports many patients and caregivers in the State of Michigan have been faced

with, and often convicted of, felonies solely because of alleged technical violations of Michigan's Act premised on issues relating to a spouse or immediate family member. It is CPU's position that the spousal relationship is of such a nature that it must be granted the strongest protections this court can fashion. The spousal relationship involves the sharing of every conceivable intimate detail, and certainly includes assisting loved ones suffering from debilitating conditions in a way unlike any other institution or governmental agency. When construing the Act and its protections, it is CPU's position that the spousal relationship is of such significance that for the purposes of the Act, the two individuals must be considered one. The prosecution of a patient or caregiver should never be premised on the role of a spouse.

WHEREFORE Amici Curiae CPU requests this Honorable Court to respectfully overrule the judgment of the Court of Appeals on this matter and to grant such additional relief as this court may deem consistent with the positions supported by this brief.

Respectfully submitted,
CANNABIS PATIENTS UNITED



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